

Decision 04-09-011 September 2, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Oxnard to construct Camino Del Sol, a public street, at-grade across the track of the Union Pacific Railroad Company in the City of Oxnard, County of Ventura.

Application 01-10-047
(Filed October 26, 2001)

OPINION DISMISSING APPLICATION

1. Summary

The City of Oxnard (City) moves to withdraw its application in this matter without prejudice to later refile. The motion is unopposed and is granted. Application (A.) 01-10-047 is closed.

2. Background

The City on October 26, 2001, filed this application seeking authority for construction of an at-grade crossing of Union Pacific Railroad Company (Union Pacific) rail tracks for an extension of Camino Del Sol in Oxnard. Union Pacific and the Commission's Consumer Protection and Safety Division (Staff) protested the application.

Following informal consultation among the parties, a Scoping Memo was issued on April 30, 2003, scheduling public hearings on the application for September 8-11, 2003. The hearings were stayed at the request of the parties to January 12-16, 2004. On December 19, 2003, the parties jointly moved for a further stay pending a request for appointment of a Commission mediator. The

motion was granted. There have been no further formal proceedings, and the parties were unable to agree on appointment of a mediator.

By Administrative Law Judge (ALJ) Ruling dated April 15, 2004, the parties were asked to comment on whether this application should be dismissed without prejudice to later refiling.

The City responded that the proceeding should not be dismissed because settlement remained a possibility. Union Pacific did not oppose dismissal, but it stated that it would be available for further settlement or mediation discussions. Staff commented that dismissal of the application (without prejudice) was appropriate “until City has a final proposal with the necessary thorough traffic analysis to submit.”

In a ruling dated May 21, 2004, the ALJ commented that the Commission seeks to resolve proceedings of this nature within 18 months of the filing date, pursuant to legislative intent set forth in Senate Bill 960 (Stats. 1996, Ch. 856) and Assembly Bill 301 (Stats. 1999, Ch. 1). In 2003, this 18-month intent language was made mandatory for subsequent ratesetting matters and was codified in Pub. Util. Code § 1708.5. Accordingly, the ALJ stated that a Draft Decision dismissing the application without prejudice would be submitted to the Commission in August 2004 unless, prior to that time, the parties reported substantial progress toward settlement, mediation or hearing.

On July 21, 2004, the City filed its motion to withdraw the application on grounds that it had been unable to reach a satisfactory resolution with Union Pacific and Staff. The City asked that the withdrawal be without prejudice to its refiling of a new application related to a crossing at Camino Del Sol.

3. Conclusion

This at-grade crossing application involves complex issues touching on safety, traffic, population growth and city finances. The parties have worked hard to reach an accommodation that would meet the City's needs and satisfy the safety concerns expressed by Staff and by Union Pacific. Agreement has not been reached, and the City implies that it needs more time to conduct various studies and analyses.

Accordingly, we grant the motion to withdraw the application without prejudice to later refiling.

4. Section 311 Comments

Because this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

5. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The City seeks authority to construct an at-grade crossing of Union Pacific rail tracks for an extension of Camino Del Sol in Oxnard.
2. The application has been protested by Union Pacific and Staff.
3. Public hearings scheduled in 2003 were stayed several times while the parties discussed settlement.
4. The City on July 21, 2004, moved to withdraw its application, without prejudice to later refiling, because it has been unable to reach agreement on the rail crossing with Union Pacific and with Staff.

Conclusion of Law

The motion to withdraw the application without prejudice to later refiling should be granted, and the application should be dismissed.

O R D E R

IT IS ORDERED that:

1. The motion of the City of Oxnard to withdraw Application (A.) 01-10-047 without prejudice to later refiling is granted.
2. A.01-10-047 is closed.

This order is effective today.

Dated September 2, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners